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**THE CONVENTION ON THE FUTURE OF EUROPE AND THE EU'S "DEMOCRATIC
DEFICIT"**

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THE CONVENTION ON THE FUTURE OF EUROPE AND THE EU'S "DEMOCRATIC DEFICIT"

1. In the aftermath of the rejection of the Treaty of Nice by the Irish electorate on June 7, 2001, most European leaders agreed with Irish Prime Minister Bertie Ahern's conclusion that this defeat demonstrated a "widespread sense of disconnection" between the European Union and its citizens.¹ Many Irish political observers, however, viewed the negative result as due more to the absence of a strong public relations campaign on behalf of the Treaty. An EU-sponsored poll tended to support this view, concluding that apathy/abstention rather than opposition was to blame.² How do you interpret the Irish vote? What needs to be done to improve the chances that the Irish voters will support the Treaty in the next referendum? Was the recent election of Irish MEP Pat Cox as President of the European Parliament designed as a sop to Irish voters? When do you foresee a new referendum being held?

2. Whether or not the EU's "democratic deficit" played a decisive role in the Irish referendum, there is little doubt that such a deficit exists. The two most recent Eurobarometer polls found that only about half of the EU's citizens believe membership in the EU is a good thing (54% in Autumn 2001, up from 48% in the Spring), while similar numbers express confidence in the EU and its institutions (53%/41%), and agree that their country has benefited from membership (52%/45%).³ After 45 years of operation, why does the EU elicit such

¹ Roland Watson and David Lister, "Brussels Blamed by Ahern for Irish 'No' Vote," *The Times* (London), June 16, 2001, accessible at web.lexis-nexis.com/universe/docu...zV&_md5=fd0898a7e0c6233f8636f0f9bd0e8375

² Irish Marketing Surveys Limited, "Attitudes and Behavior of the Irish Electorate in the Referendum on the Treaty of Nice," analysis and report by Prof. Richard Sinnott, available at www.euireland.ie, vi.

³ Eurobarometer 56, available at http://europa.eu.int/comm/dg10/epo/flash/fl114_ip_en.html, and Eurobarometer Spring 2001, IP/01/1005, July 17, 2001

lukewarm support from the people it is meant to serve? What should and can be done to increase popular support for the EU and its further development? Do you think that the EU Council's public recognition of the "democratic deficit" and its decision to call a Convention of the Future of Europe influenced the upsurge in the most recent poll from below to above 50% in the cited categories?

4. At the December 2001 Laeken Summit, the EU Council, operating at the Head of State/Government level, created a Convention on the Future of Europe and tasked it with developing proposals for consideration by an Inter-Governmental Conference in 2004 to make the EU "more democratic, more transparent and more efficient."⁴ The Council left it to the Convention itself whether to present a menu of options or a draft Constitution. At the Convention's inaugural meeting on February 28th, its Chairman, Valery Giscard d'Estaing proclaimed his desire for drafting a new constitution.⁵ What do you believe the task of the Convention should be? What do you think the Convention will decide to do? How realistic is the one-year timetable set by the Council for the Convention to do its work?

5. While ostensibly designed to address the EU's "democratic deficit," it is somewhat ironic that none of the Convention's 105 delegates were chosen for this task by popular vote. Are the delegates chosen capable of understanding and representing the views of the EU's citizenry? Is it your sense that these delegates possess democratic legitimacy? What is the public response in your country to the Convention? What is the response in the EU as a whole?

⁴ Laeken Declaration, available at <http://europe-convention.eu.int/pdf/LKNEN.pdf>

⁵ Speech by Valery Giscard d'Estaing, February 28, 2002, available at <http://europe-convention.eu.int/docs/0156SEN.pdf>

6. “The Economist” has reported that Euro-federalists overwhelmingly dominate the Convention, with but a handful of anti-federalists represented.⁶ Do you agree with this assessment? If so, what affect will this have on the perceived democratic legitimacy of the Convention? What affect will this have on popular perception of any recommendations that emerges from the Convention? What affect will this have on the tenor of debate and the possibilities for consensus in the Convention? What affect is this likely to have on those countries, such as the United Kingdom and Denmark, which have historically insisted on a confederal EU of nation-states?

7. Convention Chairman Giscard d’Estaing has proposed holding a popular referendum on a draft Constitution in 2004, in conjunction with EU Parliamentary elections. Is this an attempt to circumvent and/or influence the inter-governmental approval process? If so, couldn’t it easily backfire should the electorates in individual countries reject the proposal? Wouldn’t it be safer to ensure the support of individual governments before submitting the proposal to a referendum? Doesn’t the recent Irish referendum point to the danger of holding an EU ballot without a strong government-led campaign in its favor?

8. In the Laeken Declaration, the EU Council tasked the Convention with reaching out to Europe’s young people and coming up with proposals designed to increase their involvement in the EU and the Union’s relevance to their lives. Yet the Convention is dominated by the EU’s old guard (Chairman Giscard d’Estaing, and Vice Chairmen former Prime Ministers Dehaene of Belgium and Amato of Italy), particularly in its powerful Presidium, which sets the agenda and controls debate. Has the Convention captured the imagination of young Europeans? How effective is the Convention’s outreach program to youth? How effective is the Forum, set up

⁶ “The Founding Fathers, Maybe,” The Economist, February 23, p. 53

concurrently with the Convention, at involving civic society groups in the debate on the EU's future?

9. The dominance of the EU old guard and Euro-federal enthusiasts at the Convention lends credence to Euro-skeptics' warnings that the Convention is just one more instance of the EU elite stage-managing a top-down quantum leap towards an "ever closer union" on a disenfranchised European population, thereby accentuating the "democratic deficit." What is your assessment of this charge? To what extent is the Convention's work already a *fait accompli*? What affect will this perception have on popular and inter-governmental acceptance of the Convention's eventual recommendations?

10. Finnish Prime Minister Lipponen has complained that, "There are attempts to make the Commission answerable to a bureaucracy that is not transparent – in which the rules of the game are not the same for all (i.e., in which the large countries are favored)," and warned that the Convention, "is clearly being taken in this direction."⁷ Do you share this view? Do the leaders and populations of other small countries share this view? If so, how should the EU address this problem of a perceived disparity in government's influence within the EU Commission and bureaucracy?

11. According to the latest Eurobarometer, 67% of EU citizens are in favor of an EU Constitution. However, the poll did not question whether this support was for a specific type of constitution (federal or confederal). Nor did it explore whether the respondents' position would shift depending on whether specific constitutional provisions were adopted (such as a provision for proportional representation, or one providing disproportionate representation for small

⁷ "Finnish Warning of Dominance by Large EU Countries," euobserver.com, February 26, 2002, available at http://www.euobserver.com/index.phtml?selected_topic=9&action=view&article_id=5324

countries). How deep is this popular support for an EU Constitution? What provisions would be non-starters for your country? What provisions would be needed to ensure popular support in any referendum in your country and/or in the EU as a whole?

12. Support in principle for an EU Constitution is weakest in Denmark (50%), Portugal (55%), Finland (55%) and the UK (58%). Should the Convention take this into account in drafting its proposals, tailoring its draft Constitution or other proposals so as to maximize the odds of passage in these countries? What affect would this have on a draft Constitution's acceptability in other countries?

13. The candidate countries have an anomalous position in the Convention: they are represented on an equal basis with member countries, but they are not on the Presidium, and they specifically do not have a veto over consensus decisions by member state delegates. Why were candidate members given a "voice but no veto" over the Convention's deliberations? Won't any decisions taken over the objection of candidate countries come back to haunt the EU later, once those countries gain full membership and representation in EU bodies? Won't such actions undermine the EU's democratic legitimacy in the eyes of its future citizens?

14. Popular sentiment has run high in candidate countries in response to the EU Commission's recent proposals limiting and phasing-in agricultural subsidies, regional assistance, and labor mobility for candidates and their citizens. Do you expect candidate countries attempt to include an "equal protection" clause, or some other provision aimed at reversing or minimizing the Commission's position, in the Convention's proposals? What effect will failure to resolve this issue in the Convention have on the democratic legitimacy of the process in the candidate countries?

15. On the other hand, there is increasing popular concern in developed member countries, particularly Germany, that EU enlargement may bring about enormous additional budgetary outlays should the Common Agricultural Policy (CAP) and the regional assistance programs not be radically revised. Do you expect these countries to seek to resolve these issues within the framework of the Convention? If so, what is their likelihood of success? What effect will failure to resolve these issues have on the democratic legitimacy of the process in these countries?

16. The principle of “variable geometry” has been practiced by the EU, in which a group of members adopt a common policy, while others are permitted to opt-out. Examples include Economic and Monetary Union and the Schengen Agreement on border controls. It has been suggested, particularly by French officials, that variable geometry should be practiced more frequently, to enable a group of “core countries” to move EU development forward at a more rapid clip, rather than proceed on a lowest-common denominator basis. Smaller countries, and candidate countries, however, fear that formalization of this principle could lead to their occupying second-class status in the EU and/or provide larger countries with a mechanism for forcing reforms on the smaller states. What are your Government’s views on the principle of “variable geometry?” How do you see it being addressed by the Convention?

17. German Chancellor Schroeder and UK Prime Minister Blair released a joint letter immediately prior to the Convention’s opening, in which they called for reforming the EU Council’s procedures and voting arrangements to open Council legislative (but not executive) sessions to the public, focus Summits on key priorities, and provide for majority voting rather than requiring consensus at Summits on issues subject to majority voting under EU treaties. The timing of the letter’s release, as well as the latter two substantive calls, were widely seen as a slap at the French Government’s handling of procedural and substantive matters at the Nice

Summit. French Foreign Minister Vedrine was quoted as commenting that the Franco-German “special relationship” which traditionally has fueled EU initiatives is now “dead.”⁸ What effect, if any, has this development had on Convention deliberations? What is the status of the Franco-German “special relationship?” What effect would a diminution in that relationship have on popular perceptions of the EU? What effect would it have on French acceptance of significant EU reforms?

18. The principle of “Subsidiarity” was promulgated in the Maastricht Treaty and later expanded in the Treaty of Amsterdam as a measure designed to address the “democratic deficit” problem. While in theory “subsidiarity” is designed to ensure that decisions are taken at the most appropriate level (EU or member State or joint competence), in practice its implementation has been unclear, leading the EU Council to task the Convention with considering reform/revision in this area. What does “subsidiarity” really mean? What practical examples can you give of its operation in the EU context? Are there any examples of the EU giving competence over an area back to member states? What measures might be considered by the Convention to increase its relevance for EU member states and their citizens?

19. The principle of Subsidiarity appears analogous to the Tenth Amendment of the U.S. Constitution, which provides that powers not delegated to the U.S. by the Constitution nor prohibited to it by the States, are reserved to the States respectively, or to the people. In practice, this Amendment has largely been rendered impotent by the expansion of the U.S. Constitution’s Commerce Clause, which has been interpreted by the U.S. Supreme Court to authorize Federal intervention in nearly any economic activity. It has been argued that the European Court of

⁸ “An Anglo-German Liaison,” *The Economist*, March 2, 2002, pp. 48-49

Justice has provided similar latitude to the EU in the *Casagrande*, *Reina*, and *Bosman* cases.⁹

Critics note that an over 50% of national legislation is undertaken in order to comply with EU directives. Is there any movement to use the Convention to limit the scope of the EU's authority on matters connected, but tangential to economic activity?

20. Lack of transparency in the operation of EU institutions is another “democratic deficit” element that the Laeken Summit asked the Convention to address. Do you think that this tasking influenced the European Commission to announce just before the Convention opened that it would henceforth publish both its agenda and the minutes of its weekly meetings? What measures are being or should be considered by the Convention to improve transparency?

21. (For France) President Chirac, on March 7, called for the creation of a federation of states, but not a “superstate” or a United States of Europe. France's Europe Minister, Pierre Moscovici, on the other hand, came out in support of a United States of Europe. What is the difference between these two positions? Which is favored more by the French people? Are there other views on a future EU structure with significant support in France?

22. President Chirac also called for the abandonment of the six-month rotating EU Presidency, observing that this would become unworkable in an expanded Union. He recommended that the EU President be chosen by the Council for a fixed term. Why not provide for the popular election of a President, or the election (or right of co-decision) of the EU President by the European Parliament? Wouldn't such an election spur popular interest and involvement in the EU project, as well as permit candidates to provide the electorate with the opportunity to choose between competing visions of EU development?

⁹ “Reappraising Subsidiarity's Significance After Amsterdam,” Harvard Law School: The Jean Monnet Chair, available at <http://www.jeanmonnetprogram.org/papers/99/990702.html>

23. (For the UK) It is widely reported that the referendum on Britain adopting the Euro will be held on May 3, 2003. According to “The Economist,” recent polls indicate that support for the Euro, while growing, remains a minority position.¹⁰ Will the referendum be held as predicted? To what extent do you think that it will be a vote on the Euro itself, and to what extent a vote on the EU project as a whole? To what extent may this vote be used as a vehicle for different groups to express dissatisfaction at the performance of the Blair Government? What will be the effect of “Up Yours Delors”-style jingoism to “save the Pound” on the tabloid audience? Can the Government effectively counter this?

24. (For Belgium) Belgium, as holder of the EU Presidency during the Laeken Summit, is the godfather of the Convention. Former Prime Minister Dehaene is one of two Convention Vice-Chairman, and, as a prominent signatory to the “Wake-Up Call for Europe,” clearly favors increased integration, a federal state, and full co-decision powers for the European Parliament. What are Belgium’s views on protecting the rights, privileges and voice of small states in such a federal state? How can such protections be reconciled with the concept of true democratic representation? Is the current system of weighted non-proportional voting accepted by most Belgians? If not, what alternatives are there? Would Belgians favor a U.S.-type solution, in which one chamber of a bicameral legislature contains equal representation for individual states, whilst the other is based on proportional representation?

¹⁰ “Will he, won’t he?”, The Economist, February 2, 2002, p. 58-59

